IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE THIRD DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT APPEAL NO : 1508 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 12/12/2003 in WP NO : 12612 OF 2003 on the file of the High Court.)

Between:

Brij Kishore Harkut, S/o,Late Purushotham Das Harkut,
R/o.Chappal Bazar, Kachiguda,Hyderabad.

..... APPELLANT

AND

1 The Securities Exchange Board of India, 1st floor, Mithal, port, B-wing, 24, Nariman point, Mumbai-400051 represented by its Chairman.
2 The Manager, Secondary market Dept.,The Securities Exchange Board of India, 1st floor, Mithal port, B-wing, 24 Nariman point, Mumbai-400051.

.....RESPONDENT(S)

Counsel for the Appellant:MR.P.KESAVA RAO

Counsel for the Respondent Nos. 1 and 2: MR.P.V.S.S.RAMA RAO

The Court made the following Oral Judgment: (per Sri Devinder Gupta, CJ)

Appellant's writ petition was dismissed by learned single judge on the ground that appellant had failed to implead the persons as parties against whom he had submitted complaints to the 1st respondent.

Appellant's grievance in the writ petition was that there was total inaction on the part of the 1st respondent in not initiating any proceedings against M/s. Kailash Narayan Bhangdia and Mr. D.K. Kapur and Group of Companies in the competent Court of Special Judge for Economic Offences at Hyderabad pursuant to appellant's complaints/representations dated 27.7.2002 and 3.2.2003. As a matter of fact, in such like writ petitions, it was not necessary for the appellant to have impleaded M/s. Kailash Narayan Bhangdia and Mr. D.K. Kapur Group of Companies as parties and for that reason the order of the learned single judge dismissing the writ petition need not be correct. But, for that reason, it may not be necessary for us to pass any further orders in this appeal in-as-much-as what has been pointed out to us by the learned counsel for the respondent No.1 is that appellant's applications were forwarded to Investigation department for necessary action. In so far as the 1st respondent was concerned, the matter was treated as closed. This aspect was also noticed by the learned single judge and for that reason, the learned single judge was of the view that the persons against whom action was sought to be initiated by the appellant were necessary parties and in their absence no further orders can be passed by this Court in a writ petition; whereas counsel for the appellant insisted that positive direction be issued to Securities and Exchange Board of India (hereinafter referred to as "SEBI") to launch prosecution against the said two persons.

Under the provisions of the Securities and Exchange Board of India Act, 1992, SEBI was authorized to take appropriate decision in accordance with law when it is satisfied that action is required to be taken against any person. Person like the appellant can bring to the notice of SEBI about the irregularities committed for taking

action. One such complaint is filed and the complaint was considered by the Board and unless such action is questioned before the Court, no further direction can be issued in such like petitions. In this case also, appellant sought directions to be issued to the respondents based on his complaint for initiating proceedings against the two persons aforementioned. It was brought to the notice of the Court that appellant was an employee of the trading member and the complaint made by him does not pertain to non-receipt of securities, non-receipt of funds/dues etc. Appellant had alleged that the irregularities were done by the trading member and in that view of the matter the complaint was closed in so far as SEBI is concerned, but, however, the complaint was forwarded to the Investigation Department of National Stock Exchange, of which, the two persons were members for further action.

In this view of the matter, we find no substance in the appeal and the same is accordingly dismissed.

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DEVINDER GUPTA, CJ

Date: 3rd November, 2004

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C.V.RAMULU,J

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To

1 The Chairman, Securities Exchange Board of India, 1st floor, Mithal, Port, B-wing, 24, Nariman point, Mumbai-400051,

2 The Manager, Secondary Market Dept., The Securities Exchange Board of India, 1st floor, Mithal port, B-wing, 24 Nariman point,

Mumbai- 400051.

3 Two C.D. copies